United States Court of Appeals

for the Second Circuit

APPELLANT'S REPLY BRIEF

ORIGINAL **77-7205**

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

IMAGE CARRIER CORPORATION,

Plaintiff-Respondent,

—against—

ABRAHAM D. BEAME, Mayor of New York City, et al.,

Defendants-Appellants.

THE HOUSE OF LITHOGRAPHY, INC., et al.,

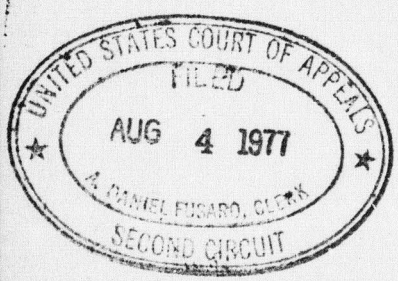
Plaintiffs-Respondents,

—against—

ABRAHAM D. BEAME, Mayor of New York City, et al.,

Defendants-Appellants.

INTERVENOR-APPELLANT'S REPLY BRIEF



MENAGH, TRAINOR & ROTHFELD
Attorneys for Intervenor-Appellant Allied Printing Trades Council of Greater New York
Office & P. O. Address
130 East 40th Street
New York, New York 10016
(212) 532-3850

Of Counsel:
NORMAN ROTHFELD

TABLE OF CONTENTS

	PAGE
RESPONDENTS' MISSTATEMENT OF FACT	1
REPLY TO POINT I	
Respondents lack standing and have not demonstrated their right to obtain judicial relief	4
REPLY TO POINT II	
Judge MacMahon's finding that the union label requirement was arbitrary and irrational is erroneous	6
REPLY TO POINT III	
The need to uphold prevailing wage rates justifies the union label policy	6
REPLY TO POINT IV	
No "fundamental right" of respondents is here involved	11
REPLY TO POINT V	
The National Labor Relations Act is inapplicable to the New York union label requirements	12
CONCLUSION	16

Cases Cited

Adams v. Brennan, 177 Ill. 194, 52 N.E. 314 (1889)	8
Amalgamated Ass'n. of Street, Electric Railway & Motor Coach Employees et al. v. Lockridge, 403 U.S. 274 (1971)	14

PAGE

Amalithone Realty Co. v. City of New York, 162 Misc. 715 (Sup.Ct., N.Y. 1937) affd. 251 App.Div. 450 (1st Dept. 193.) 13

Dothard v. Rawlinson, 45 U.S.L.W. 4888 (1977) 5

Dunn v. Blumstein, 405 U.S. 330 (1972) 12

Eisenstadt v. Baird, 405 U.S. 438 (1972) 9

Fiske v. People ex rel. Raymond, 188 Ill. 206, 58 N.E. 985 (1900) 8

Garner et al. v. Tteamsters, Chauffeurs and Helpers Local Union, 346 U.S. 485 (1953) 15

Hanson v. Unified School District No. 500, Wyandotte Cty., Kansas, 364 F. Supp. 330 (D. Kan. 1973) 11

Hawaiian Telephone Co. v. State of Hawaii Dept. of L. & I. Rel., 405 F. Supp. 275 (D. Hawaii 1975) 14

Keyes Electrical Service v. Bd. of Chosen Freeholders, 15 N.J. 178, 83 A.2d 61 (1951) 7

Long Island Signal Corp. v. County of Nassau, 51 Misc.2d 320, 273 N.Y.S.2d 188 (1966) 7

Machinists and Aerospace Workers v. Werc, 427 U.S. 132 (1976) 14

Master Printers Ass'n. v. Bd. of Trustees of Junior College Dist. No. 508, City of Chicago and State of Illinois, 356 F. Supp. 1355 (N.D. Ill. 1973) 8

McGinnis, Commissioner of Correction, et al. v. Royster, et al., 410 U.S. 263 (1973) 10

Miller v. City of Des Moines, 143 Iowa 409, 122 N.W. 226 (1909) 8

PAGE

Modern and Continental Construction Co., Inc. v. Mass. Port Authority, —— Mass. ——, 343 N.E. 2d 362 (1976) 7

NLRB v. Nash-Finch Co., 404 U.S. 138 (1971) 14

People ex rel. John Single Paper Co. v. Edgcomb, 112 A.D. 604, 98 N.Y.S. 965 (1906) 8

Rayco Construction Co. v. Vorsanger, 397 F.Supp. 1105 (E.D. Ark. 1975) 10

Reed v. Reed, 404 U.S. 71 (1971) 9

San Diego Building Trades Council et al. v. Garmon, et al., 359 U.S. 236 (1959) 14

Shapiro v. Thompson, 394 U.S. 618 (1969) 11

Shelton v. Tucker, 364 U.S. 479 (1960) 12

State ex rel. U.S. District Heating, Inc. v. State Office Building Commission, 124 Ohio St. 413, 179 N.E. 138, 125 Ohio St. 301, 181 N.E. 129 (1932) 8

Truax v. Raich, 239 U.S. 33 (1915) 11

Upchurch v. Adelberger, 231 Ark. 682, 332 S.W. 2d 242 (1960) 7

Warth v. Selden, 422 U.S. 490 ..... 4, 5

Wright v. Hoctor, 95 Neb. 342, 145 N.W. 704, 95 Neb. 355, 146 N.W. 997 (1914) 8

United States Constitution Cited

Fourteenth Amendment 7, 8, 12

PAGE

Statutes Cited

National Labor Relations Act 12, 13
New York Correction Law 10
29 U.S.C. (Taft-Hartley Law):
Sec. 164 14

Miscellaneous

New York City Resolution, April 12, 1934 ..... 3, 10
New York State Labor Law:
Sec. 220 2

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

IMAGE CARRIER CORPORATION,

Plaintiff-Respondent,

—against—

ABRAHAM D. BEAME, Mayor of New York City, et al.,

Defendants-Appellants.

THE HOUSE OF LITHOGRAPHY, INC., et al.,

Plaintiffs-Respondents,

—against—

ABRAHAM D. BEAME, Mayor of New York City, et al.,

Defendants-Appellants.

INTERVENOR-APPELLANT'S REPLY BRIEF

Respondents' Misstatements of Fact

The misstatements of fact contained in Respondents' brief included:

1. that "in many instances, non-union employees make more than employees of union printers" (at page 6, Foot-

note 4), and that open shops "often pay rates comparable with those union shops" (at page 15). This Court is respectfully referred to our Brief at pages 16 through 23 inclusive. These statements by Respondents have no factual basis.

2. that two of the Respondents "did, in fact, attempt to submit bids on certain City contracts" (at page 11). None of the Respondents prepared any bid for submittal on any City contract. This Court is respectfully referred to our Brief at page 10.

3. that "each of the Respondents stated they were capable of performing most of the projects commissioned by the City" (at page 12). The largest of the plaintiffs, Associated Litho Letter Service, Inc., which employs four employee printers, admitted that it cannot perform flat form printing (109a), which constitutes the bulk of defendants' printing which requires a union label.

4. that Mr. Blank was "the only witness fully knowledgeable with respect to the City's printing requirements". Three other witnesses, each an official of a defendant agency subpoenaed by Respondents, Ceasar C. Altomare, Sol Berger and Leonard Katz, obviously were knowledgeable about their agencies' own printing requirements. Altomare, Deputy Commissioner of the Department of Purchase and employed in that Department since 1941, testified that the plaintiffs would have been rejected as bidders because of their lack of sufficient personnel (122a-123a).

5. that New York State's prevailing rate law is "a Regulation" (at page 15). This law, §220 of the New York State Labor Law, is a statute and is quoted from at pp. 14-15 of our Brief.

6. The *implication*, which a superficial reading would convey and did convey to the Court below, that the num-

ber of non-union printing workmen either constitutes a majority or is trending towards a majority of printing workmen (at page 8, Footnote 7 and page 19). There is unfortunately no scintilla of statistic in the record relating to the ratio of unionized printing workmen to non-union printing workmen in New York City. Mr. Blank did not testify with respect to such ratio but with respect to the union and non-union *employers* in his Association. This Court is respectfully referred to our Brief at page 16.

7. The statement at p. 12 that "The listing of the representative clients of each Respondent further confirms their capability of producing work of the same nature and quality as required by the City", and that they "routinely perform similar work for both private and public sector clients." (at p. 18). The record does not indicate with any degree of particularity the types and quantities of printing work which Respondents have performed for these private companies, except testimony such as that Associated does "small printing such as letters, simple forms, advertising promotion brochures, reply cards, letterheads" (109a), and only one Respondent has performed work for the public sector (109a).

8. that "under the terms of the Mayoral Order"*, the work on letterheads and envelopes "must presumably still be performed in a union shop" (at page 3, Footnote 2). There is no scintilla of testimony to that effect.

9. that Image Carrier Corporation was personally informed that its bid could not be accepted (at page 11). Image Carrier was not personally informed (144a).

---

* The 1934 New York City Resolution was signed by the Comptroller and by the Corporation Counsel as well as by the Mayor.

Reply to Point I

Respondents lack standing and have not demonstrated their right to obtain judicial relief.

Respondents suggest that we waived or abandoned our standing argument, stating that after Judge MacMahon rejected our standing argument "Appellants did not thereafter attack the standing of the respondents in the amended complaint and likewise raised no question of standing at the trial proceeding below" (at page 12, Footnote 9). While the Intervenor-Appellant did not raise the question of standing at the trial verbally, it did so in our trial Memoranda.

Respondents misstate our interpretation of *Warth* v. *Selden,* 422 U.S. 490, stating "the Intervenors construe *Warth* to imply that since none of the Respondents have ever successfully bid on a City printing job, the Respondents have not suffered a demonstrable particularized injury." (at page 10). What we did say was:

> "Based upon these considerations cited by the Supreme Court in *Warth,* the status of potential bidder clearly does not by itself suffice to confer standing to sue." (Our Brief p. 9)
>
> * * *
>
> "The likelihood that any of the plaintiffs would have been a successful bidder even absent the union label requirement for a job which requires the union label is small indeed. (139a-140a).
>
> While other non-union printers might well be potential successful bidders, no such potential bidder saw fit to participate in this action." (Our Brief p. 10)

In an attempt to refute our argument that Respondents have not suffered any demonstrable particularized injury as required by the Supreme Court in *Warth,* the Respondents at pp. 10-11 cited *Dothard* v. *Rawlinson,* 45 U.S.L.W. 4888 (1977), to the effect that a prima facie case may sometimes be premised on generalized statistics. *Dothard* was a class action wherein the plaintiff, like the other members of her class, suffered particularized injury, having been rejected for employment because she failed to meet a weight requirement, which requirement was argued to constitute illegal discrimination against women. The instant case is not a class action and was rejected as a class action by order of Judge MacMahon (65a). We have not contended that relief may not be granted to the Respondents because they never successfully submitted a bid (sic!) on a City printing job (Respondents' Brief at p. 10). Relief must be denied Respondents because there is no evidence that the union label requirement was the proximate cause of their dearth of successful bids.

Finally, Respondents allude at page 12, Footnote 11, to New York City's policy of rejecting bids of printing contractors who lack sufficient employees to complete said contracts without brokering out work. Whether or not this policy is unjust or arbitrary, this policy could not be affected by Judge MacMahon's decision and therefore will continue to bar Respondents' bids. This policy, however unjust it may be, constitutes one reason why Respondents lack standing and in any event have not demonstrated their right to judicial relief.

Reply to Point II

Judge MacMahon's finding that the union label requirement was arbitrary and irrational is erroneous.

Respondents contend that Judge MacMahon "was correct in concluding that Appellants' restrictive bidding and contract awarding practices were arbitrary and irrational and not reasonably related to any legitimate governmental purpose" (at page 13). Judge MacMahon did not find that a desire to uphold a prevailing wage rate was not —or was—a legitimate governmental purpose. The Court merely found that the union label requirement was unrelated to such purpose.

Reply to Point III

The need to uphold prevailing wage rates justifies the union label policy.

Respondents erroneously state (at page 14) that the need to uphold the prevailing wage rate for printing tradesmen is a "post-hoc justification(s)" for the union label policy. The text of the 1934 New York City Resolution (our Brief, at p. 13) establishes that the prevailing rate of wages was of primary concern at that time.

Respondents state—dehors the record—that the bid solicitations did not mention prevailing wages. We have not seen these bid solicitations. It is self-evident, however, that since union scales represent the highest wage rates, the union label guarantees that the wage rate paid either is the prevailing rate or is higher than the prevailing rate. We further note that the standard form of contract proposal of Defendant Board of Education states, "Labor

Law" "The contractor agrees that he will comply with all of the applicable provisions of the State Labor Law" (129a)—which, of course, includes the prevailing rate statute.

Respondents' assertion at p. 16 that the weight of authority prohibits retricting of public contract bidding to unionized firms is beside the point. We do not contend that such restrictions usually comply with the laws of most of the States, nor is such State law relevant here.

Respondents' numerous citations (at p. 17) to the effect that municipalities' union label policies are unconstitutional either are miscitations or make no reference to prevailing wage rates and/or the Fourteenth Amendment. Thus, in *Modern and Continental Construction Co., Inc.* v. *Massachusetts Port Authority,* 343 N.E. 2d 362, the Appellate Courts *upheld* the right of the Port Authority to reject the lowest bidder, a non-union contractor, after a union threatened to picket because said bidder did not observe area wage standards. Constitutionality was not mentioned.

In *Long Island Signal Corp.* v. *County of Nassau,* 51 Misc. 2d 320, the Judge stated *ab initio* that "Respondent raised no substantial issue concerning the payment by Petitioner of prevailing wages * * *." 273 N.Y. Sup. 2d at 193.

In *Upchurch* v. *Adelberger,* 332 S.W. 2d 242, the Petitioner had a contract with a printers union other than Allied Printing Trades Council, which had a monopoly. The Court did not cite the Fourteenth Amendment but only the prohibition of monopolies by the Arkansas Constitution.

In *Keyes Electrical Services* v. *Board of Chosen Freeholders,* 83 A. 2d 61, the Appellate Court dissolved a restraining order addressed to a bid requirement that "All

labor employed on the project shall conform to local labor union practices" because this specification did not "of itself and in the absence of proof establish arbitrariness and bad faith."

In *John Single Paper Company* v. *Edgcomb,* 112 A.D. 604, the Court voided a requirement that only the Allied Printing Trades Council may be used, stating that less than half the printers in the County belonged to Allied. No reference was made to constitutionality.

Miller v. *City of Des Moines,* 122 N.W. 226 and *Adams* v. *Brenan,* 52 N.E. 314 make no reference to the Fourteenth Amendment or to prevailing wage rates.

Fiske v. *People ex rel Raymond,* 58 N.E. 985 contains a dictum that an ordinance restricting hiring to persons who were already union members—a closed shop—was unconstitutional. Likewise, in *United District Heating, Inc.* v. *State Office Building Commission,* 179 N.E. 138, 181 N.E. 129, the Court held that a public contract may not be denied to the lowest bidder "upon the sole ground that he does not employ *exclusively* union labor" (emphasis supplied). The union label is not a closed shop but merely means that the union represents the employees.

In *Wright* v. *Hoctor,* 145 N.W. 704, the Court noted the argument "that no man may put his finger upon that section of the Constitution which forbids this manner of letting a contract", but nevertheless found same "unconstitutional".

Respondents cite at p. 16 Judge MacMahon's ill-considered decision as "the leading Federal Court opinion on this subject" and states that prior to the instant case, the leading Federal Court opinion was *Master Printers Association* v. *Board of Trustees of Junior College Dist. No. 508, City of Chicago and State of Illinois,* 356 F. Supp. 1355 (N.D., Ill. 1973). In *Master Printers Association,* Judge Marovitz does not mention the Fourteenth Amend-

ment or the due process clause or the equal protection clause, but merely discusses the cases cited in support of the proposition that municipal contracts cannot be restricted to firms employing only union labor, and he concludes as follows:

> "While most of the Illinois cases cited are not of recent vintage, indications are that they still represent the law in this State as they exist today.
>
> In view of the foregoing cases we believe that Plaintiff may be able to prove that it falls within the ambit of this proposition and we therefore deny the Motion to Dismiss with leave to reinstate at a later date should the facts evolve in such a manner as to indicate the inapplicability of the above stated rule to this case."

Judge Marovitz thereafter enjoined the continuation by Chicago of its union label requirement, without, however, issuing an opinion.

Respondents also misstate (at p. 18) the applicable Federal law as requiring that classifications must have a "substantial relation" and not merely a rational connection to a legitimate government objective. Respondents further fail to distinguish between cases which involve inherently suspect classifications and those cases which do not.

The more recent cases cited by Respondents involve the following factual citations, all inapplicable here:

Reed v. *Reed,* 404 U.S. 71, involved a statute giving preference to men as administrators of estates.

Eisenstadt v. *Baird,* 405 U.S. 438, involved a conviction based upon a statute which prohibited, for unmarried persons only, distribution of contraceptives.

McGinnis v. *Royster,* 410 U.S. 263, was a reversal of a decision which involved the provision of the New York Correction Law which denied to State prisoners good-time credit towards parole eligibility for presentence county jail incarceration, on the ground that rehabilitation programs did not exist in the county jails.

Rayco Construction, Inc. v. *Vorsanger,* 397 F. Sup. 1105 (E.D. Ark., 1975) involved a "completely unreasonable and irrational" statutory distinction between private construction contractors and public construction contractors. This same complete irrationality test is applicable to the instant case.

Respondents further argue, at pp. 20-21, that the 1934 New York City Resolution no longer is viable today because that Resolution promulgated the union label policy to assist the printing workmen during their "present enonomic depression" and, state respondents, such depression no longer exists. This argument is fallacious because:

1. While no record was made at the trial with respect to whether or not the printing workmen in New York City are suffering from economic depression, this Court may take judicial notice that very substantial unemployment exists today throughout New York City.

2. The full extent of the disparity between wages and wage supplements received by union printing workmen and by Respondents' non-union employees is absent from the record solely because Judge MacMahon refused to hear this testimony. (Our Brief, pp. 17-20).

3. The Appellants do not rely solely upon the 1934 Resolution but rather upon the decision by each New York City Administration since 1934, including the present Administration, to retain this union label policy. The Board of Education bases its practice upon New York State policy (129a-130a).

Reply to Point IV

No "fundamental right" of Respondents is here involved.

The Respondents equate their "fundamental right" to do business as printing contractors with a fundamental right to have their bids accepted by defendants. The Respondents' argument might have merit in Soviet Russia, where all printing reportedly is done under State auspices. In New York City most printing contracts are not, of course, let by the defendants.

The cases cited by Respondents are all inapposite. Thus, in *Truax* v. *Raich,* 239 U.S. 33 (1915), the Supreme Court invalidated an Arizona statute which limited all kinds of employment of aliens to 20% of the employer's payroll, because "the right to obtain support in the ordinary fields of labor is necessarily involved" and any limitation against employment by lawful resident aliens was unjustified.

In *Hanson* v. *Unified School District No. 500 Wyandotte City, Kansas,* 364 F. Supp. 330 (D. Kan., 1973), the District Court held residency requirements for school teachers to be arbitrary and lacking in any reasonable basis. The Court explicitly did "not reach the question of whether fundamental rights were involved, which might trigger the stricter compelling-state-interest test. *Shapiro* v. *Thompson,* 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969); *San Antonio Ind. School Dist.* v. *Rodriguez,* 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973)." If the Court had found that fundamental rights were involved, the reason most probably would have been that most school teaching jobs are found in the public schools.

In *Shapiro* v. *Thompson,* 394 U.S. 618 (1969), the Supreme Court upheld a three-judge District Court deci-

sion holding unconstitutional statutes which denied welfare assistance to residents of less than one year on the ground that "The constitutional right to travel from one State to another . . . occupies a position fundamental to the concept of our Federal Union. It is a right which has been formerly established and repeatedly recognized." (id at 630). For the same reason, the Supreme Court in *Dunn* v. *Blumstein,* 405 U.S. 330 (1972), upheld a judgment which involved Tennessee's durational residency requirements for voting.

And in *Shelton* v. *Tucker,* 364 U.S. 479 (1960), the Supreme Court invalidated an Arkansas statute which required teachers to file affidavits listing all organizational affiliations because it deprived them of their rights of associational freedom protected by the due process clause of the Fourteenth Amendment from invasion by State action.

Reply to Point V

The National Labor Relations Act is inapplicable to the New York union label requirement.

Respondents contend in Point V, at page 23, that "the Federal labor policy set forth in the National Labor Relations Act pre-empts and voids action by local governmental bodies which contravene these policies."

This contention is totally invalid for the following reasons:

1. As Judge MacMahon correctly ruled in his Decision on our motion to dismiss, when he dismissed the Plaintiffs' claim of jurisdiction based upon §7 of the National Labor Relations Act (67a), the Act does not regulate labor practices of governmental agencies.

2. The right of employees to refrain from union activity as set forth in §7 of said Act, quoted at page 24, constitutes a guarantee against interference only by the employees' own employers—the Plaintiffs herein.

3. It appears that the right to refrain from union activity is inapplicable even with respect to the Plaintiffs. In view of the small size of each of the Plaintiffs there is no reason to believe that the NLRB would deem them engaged in interstate commerce, absent which commerce the NLRB would not exercise jurisdiction over them. As correctly stated by Respondents atop page 23, the NLRA constitutes Congressional action under the Commerce Clause. Absent commerce, the NLRA of course is inapplicable. Hence, the New York State Labor Law, which like the original NLRA in effect between 1935 and its amendment in 1947 did not give employees the right to refrain from union activity, remains in effect with respect to companies which are not in interstate commerce. This Court is respectfully referred to our Brief at pp. 28-29.

4. Respondents' further argument at page 26 that the requirement of the 1934 Mayoral Order that only intervenor-appellant's union label may be used interferes with the employee's choice of unions, is not addressed to an issue in this case. In 1937, the New York State Courts in *Amalithone Realty Co.* v. *City of New York,* 162 Misc. 715 (Sup.Ct. N.Y. 1937) aff'd. 251 App.Div. 450 (1st Dept. 715 (Sup.Ct., N.Y.) aff'd. 251 App.Div. 450 (1st Dept. 1937), cited in our Brief at page 6, held that New York City must accept the label of any printers union, and New York City has done so since. The Board of Education, a New York State agency, never has sought to restrict bidders to possessors of the Allied label.

5. The clear implication by Respondents that the NLRA constitutes a uniform National Labor policy with respect to the extent of the freedom of employees to un-

ionize is patently wrong. Thus, the Act in 29 USCA §164 provides:

> "Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law."

Accordingly, twenty States have enacted right-to-work laws.

6. Respondents cite a line of cases wherein State action was reversed because the NLRB, or a provision of the NLRA, had preempted jurisdiction. On their facts, all these cases are inapplicable here.

Thus, in *Machinists & Aerospace Workers* v. *WERC*, 427 U.S. 132 (1976), the Supreme Court held that a union's concerted refusal to work overtime may not be enjoined by the Wisconsin Supreme Court where the NLRB took jurisdiction and dismissed the charge against the union.

In *San Diego Bldg. Trades Council* v. *Garmon*, 359 U.S. 236 (1959), the Supreme Court held that the State of California may not award damages against a union for engaging in peaceful picketing activity which was regulated by the NLRA because the "compelling state interest", which would justify state interference, did not here exist. To the same effect see *NLRB* v. *Nash-Finch Co.*, 404 U.S. 138 (1971).

In *Hawaiian Telephone* v. *State of Hawaii Dept. of L. & I. Rel.*, 405 F. Supp. 275 (D. Hawaii, 1975), the District Court enjoined Hawaii's payment of unemployment insurance benefits to certain strikers as constituting State interference with collective bargaining, which violates the intent of Congress that collective bargaining be free from State interference.

In *Amalgamated Association of Street Employees* v. *Lockridge,* 403 U.S. 274 (1971), Lockridge obtained a judgment in an Idaho Court against his union which caused his employer to discharge him for arrearage in his union dues payments. The Supreme Court reversed and held that the NLRB had preemptive jurisdiction and that Lockridge should have filed a charge with the NLRB because: "Pre-emption * * * is designed to shield the system from conflicting regulation of conduct."

In the instant case, as Judge MacMahon noted, the defendant government agencies are immune from regulation by the NLRB or by any provision of the NLRA, hence no conflicting regulation of their conduct is possible. As the Supreme Court stated in *Garner* v. *Teamsters Union,* 346 U.S. 485 at 488:

> "The national . . . Act . . . leaves much to the states, though Congress has refrained from telling us how much. We must spell out from conflicting indications of congressional will the area in which state action is still permissible."

By explicitly legislating the inapplicability of NLRA restrictions to government agencies the "congressional will" in this situation is not in doubt.

7. Finally, Respondents' apparent concern for the alleged desire of their employees not to join unions is less than sincere. This Court now has before it a proceeding by the NLRB to enforce its order that Deven Lithographers, Inc. must bargain collectively with a printers union. Deven withdrew as a co-plaintiff at the inception of this trial (107a), as we noted on page 10 in Footnote 2 of our Brief.

CONCLUSION

The Order of the District Court should be reversed and the Complaint dismissed.

Dated: New York, New York
August 1, 1977

Respectfully submitted,

MENAGH, TRAINOR & ROTHFELD
Attorneys for Intervenor-Appellant Allied Printing Trades Council of Greater New York
Office & P. O. Address
130 East 40th Street
New York, New York 10016
(212) 532-3850

Of Counsel:
NORMAN ROTHFELD

Service of three (3) copies of
the within
hereby admitted this day
of , 197

Attorney for

Service of three (3) copies of
the within
hereby admitted this day
of , 197

Attorney for

COPY RECEIVED (2)
TOWNLEY & UPDIKE
1977 AUG -4 PM 3:16

Two
~~THREE~~ COPIES OF THE WITHIN PAPER
HAVE THIS DAY BEEN RECEIVED AT THE
OFFICE OF THE CORPORATION COUNSEL
August 4, 1977
CORPORATION COUNSEL